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TRIAL—EXAMINING JUROR—INDEMNITY INSURANCE.—In an action for personal injuries brought by an employee against his employer, while examining the jury panel upon their *voir dire*, the counsel for the plaintiff asked each prospective juror whether or not he would be prejudiced by knowledge that the X company was an insurer against any injury to the defendant's employees. These questions were admitted over the objections by the opposing counsel, who appealed. *Held*, that this was a reversible error, since such conduct constituted a basis for an inference that defendant had indemnity insurance. *Arnold v. California Portland Cement Co.* (1919, Calif.) 183 Pac. 171.

It is well settled that in this class of actions a jury should not be allowed to consider the fact that the employer is insured against accidents to his employees. *Sawyer v. Arnold Shoe Co.* (1897) 90 Me. 369, 38 Atl. 333; *Herrin v. Daly* (1902) 80 Miss. 340, 31 So. 790. But as a basis for the examination of the jurors on the *voir dire*, evidence may be offered to show that an insurance company is interested in the outcome of the action. *Egner v. Curtis, Fowle & Paine Co.* (1914) 96 Neb. 18, 146 N. W. 1032; *Archer v. Skahen* (1917) 137 Minn. 432, 163 N. W. 784. For if a juror has a direct pecuniary interest in a company insuring the defendant against injury to his employees, he is subject to a challenge for cause. *Citizens' Light, Heat & Power Co. v. See* (1913) 182 Ala. 561, 62 So. 199. This information is also necessary to enable the counsel to use intelligently his peremptory challenges. *Foley v. Cudahy Packing Co.* (1903) 119 Iowa, 246, 93 N. W. 284; *Spoonick v. Backus-Brooks Co.* (1903) 89 Minn. 354, 94 N. W. 1079. All the courts recognize that evidence admitted for the sole purpose of providing a basis for the examination of prospective jurors is likely to be misused, and consequently it is universally required that the counsel's questions be asked in good faith. *Pekin, Stone & Mfg. Co. v. Ramey* (1912) 104 Ark. 1, 147 S. W. 83; *Camp v. Churchill* (1914) 186 Ala. 173, 65 So. 336. The instant case is in accord with the holdings of some courts which hold that the examination of the jurors must be so conducted as not to imply that defendant is insured against liability. *Odell v. Genesee Const. Co.* (1911) 145 App. Div. 125, 129 N. Y. Supp. 122; *Mithen v. Jeffery* (1913) 259 Ill. 372, 102 N. E. 778. It is submitted that the better view does not so restrict the counsel in his examination. *Swift v. Platte* (1903) 68 Kan. 10, 74 Pac. 635; *Viou v. Brooks-Scanlon Lumber Co.* (1906) 99 Minn. 97, 108 N. W. 891. For it is difficult to understand how a counsel could intelligently examine jurors, unless the fact as to the existence of liability insurance, the particular company writing it, its local agents, etc., are disclosed to the jury panel.

TRIAL—NEW TRIAL—IMPOSSIBILITY OF PROCURING RECORD OF TRIAL.—The appellants were convicted of a crime in the court below and took the usual proceedings to appeal. Due to the death of the court stenographer, a transcript of the proceedings could not be obtained. A motion was then made to the Supreme Court asking that a new trial be directed on the ground that they could not be heard on appeal from the judgment rendered. *Held*, that the court had no power to grant the motion. *State v. Ricks* (1919, Idaho) 180 Pac. 257.

There is a sharp conflict of authority whether or not a new trial will be granted where the party has lost the benefit of regularly taken exceptions through no fault or negligence of his own. Those courts whose creation and jurisdiction depend entirely upon statute refuse a new trial, except under circumstances named in the statute. *Stenographer Cases* (1905) 100 Me. 271, 61 Atl. 782. Other jurisdictions, as in the instant case, deny such relief on the theory that the right to a new trial is purely statutory and is to be granted upon certain

conditions with which the appellant must strictly comply. *Etchells v. Wainwright* (1904) 76 Conn. 534, 57 Atl. 121. Some courts also seem to base the denial of a new trial in such cases on policy. *Cf. Bingman v. Clark* (1916) 178 Iowa, 1129, 159 N. W. 172. The majority view, however, in both civil and criminal cases, affords the appellant relief where the record necessary for a review of the case is lost or unobtainable. These courts allow a new trial as a matter of justice and as within the inherent or incidental powers of the court, not based upon a statutory provision. *Bailey v. United States* (1909) 3 Okla. Cr. App. 175, 104 Pac. 917; *Cf. Richardson v. State* (1907) 15 Wyo. 465, 89 Pac. 1027. A few jurisdictions have arrived at the same conclusion by a liberal construction of the statutory grounds for appeal. *Nelson v. Marshall* (1904) 77 Vt. 44, 58 Atl. 793. It seems that this might readily have been done in the principal case. In civil cases, much may be said in favor of the rule in the instant case, because it would not be equitable to transfer the hardship of the appellant to the appellee, in addition to compelling him to undergo the expense of a second trial. However, in criminal cases, both principle and policy support the majority doctrine. No property rights would be interfered with; the state is simply exacting punishment. It is submitted that it is a mockery of justice to deny the appellant any opportunity of relief on a mere technicality in a criminal case.

TRUSTS—CHARITABLE TRUSTS—TRUST FOR "BENEVOLENT PURPOSES" UNCERTAIN AND VOID.—A gift was made by will to trustees of a church in trust to use the income "for support of the church or such benevolent purposes as the trustees of said church shall direct." *Held*, that as the trustees had discretion to use for benevolent purposes which would include purposes not strictly charitable, the gift was not a charitable trust and was therefore void for uncertainty. *Smith v. Pond* (1919, N. J. Ch.) 107 Atl. 800.

The court correctly held that general discretion given a trustee to select any charity does not render the trust void. *Re Pardue* [1906] 2 Ch. 184; *Gill v. Atty. Gen.* (1908) 197 Mass. 232, 83 N. E. 676; see *Re Dulles* (1907) 218 Pa. St. 162, 167, 67 Atl. 49, also 12 L. R. A. (N. S.) 1177, note. *Contra, Bristol v. Bristol* (1885) 53 Conn. 242, 5 Atl. 687 (by a divided court); *Hadley v. Forsee* (1907) 203 Mo. 418, 101 S. W. 59; see also 14 L. R. A. (N. S.) 49, note. Its holding that where a non-charitable purpose is included with a charitable purpose the entire trust fails, since the trustees cannot be compelled, against the donor's intent, to apply the fund to the charitable purpose, likewise accords with the authorities. *Morice v. Durham* (1804, Eng. Ch.) 9 Ves. 399, 10 Ves. 522; *Minot v. Atty. Gen.* (1905) 189 Mass. 176, 75 N. E. 149; cases collected, 11 C. J. 330. The court was bound by previous authorities in New Jersey to hold that "benevolent" was more inclusive than "charitable," although it was strongly of the impression that in so doing it was frustrating the wishes of the testatrix. It would seem more in accord with the probable intention of testators to hold "benevolent," as here used, synonymous with "charitable," and this has been so held. *Suter v. Hilliard* (1852) 132 Mass. 412; *Fox v. Gibbs* (1893) 86 Me. 87, 29 Atl. 940; see *Re Hinckley* (1881) 58 Calif. 457, 507. But a result similar to that of the principal case has been reached in other cases. *Adye v. Smith* (1876) 44 Conn. 60; *James v. Allen* (1817, Eng. Ch.) 3 Meriv. 17, 36 Reprint, 7; see 7 C. J. 1140, 1141; also Sanger, *Remoteness and Charitable Gifts* (1919) 29 YALE LAW JOURNAL, 46.

WILLS AND ADMINISTRATION—EXECUTORS—SETTLEMENT OF ACCOUNT—ATTORNEYS' FEES.—An executor employed a firm of attorneys to prosecute an action to recover damages for the wrongful death of his testator. It was agreed that